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June 24, 2019

California Public Utilities Commission - Energy Division
Attention: Tariff Unit, Room 4005
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Subject: Comments of the Public Advocates Office on Resolution E-5007 approving, with adjustments, Energy Efficiency Savings and Performance Incentive awards for the four major California investor-owned utilities for program years 2016 and 2017.

Dear Energy Division Tariff Unit,

Pursuant to Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) hereby submits comments on Draft Resolution E-5007 (Draft Resolution), which would approve with adjustments, Efficiency Savings and Performance Incentive (ESPI) awards for the four large Investor-Owned Utilities (IOUs) for program years 2016 and 2017.

BACKGROUND

The Commission adopted the current ESPI mechanism in Decision (D.) 13-09-023. The ESPI mechanism consists of a multi-component incentive structure intended to motivate IOUs to invest in energy efficiency (EE) resource programs, as well as in activities such as workforce education and training; marketing, education, and outreach; and the administration of codes and standards advocacy and compliance improvement programs. The ESPI's four components are Energy Efficiency Resource Savings, Ex-Ante Review Process Performance, Codes and Standards (C&S), and Non-Resource Programs.

The purpose of the ESPI is to align the IOUs' business interests with those of ratepayers by offering the IOUs incentives to achieve cost-effective EE savings and rewarding IOU shareholders when they do. As the decision authorizing the ESPI noted, "[o]ur adopted incentive mechanism is also designed to motivate utilities to prioritize EE goals, while protecting ratepayers through necessary cost containment mechanisms."¹

¹ D.13-09-023, p. 2.

In D.18-05-041, the Commission found that SoCalGas has used ratepayer funds approved for C&S advocacy to undermine gas efficiency standards, rather than working to further the Commission's goal of "advancing more stringent codes and standards."² Based on the Commission's findings and conclusions in D.18-05-041, the Commission should deny SoCalGas' request for \$91,293 in shareholder awards for codes and standards for the 2017 program year. The Commission also should true up to zero SoCalGas' award for shareholder awards for codes and standards for program year 2016.

Despite citing the fact established in D.18-05-041 that SoCalGas had not used ratepayer funds to advance the Commission's objectives by advocating for more stringent C&S,³ the Draft Resolution nonetheless awards C&S advocacy shareholder incentives to SoCalGas for 2016 and 2017.⁴ The Draft Resolution offers two justifications for awarding SoCalGas a management fee despite its acknowledged misdeeds in managing the C&S program. First, the Draft Resolution states that "it would be inappropriate to deny otherwise permissible incentives prior to 2018."⁵ Second, it argues that SoCal must be granted a C&S management fee for program years (PY) 2016 and 2017 because it was already granted rate recovery for C&S advocacy for those years. The Draft Resolution concludes that since no party filed a protest challenging SoCalGas's full-rate recovery for C&S advocacy in 2016 and 2017, and the Commission approved full-recovery (subject to audit verification and adjustment), the Commission is obligated to approve the associated management fee as well.⁶

Both of the above arguments are erroneous. In the discussion below, the Public Advocates Office recommends that:

- The Draft Resolution errs in concluding that approval of SoCalGas' request for rate recovery for C&S Advocacy in program year (PY) 2016 and 2017 requires approval of SoCalGas' requested C&S management fees.
- The Draft Resolution errs in finding that the Commission must grant incentives for program years prior to 2018.

² D.14-10-046, p.61.

³ Resolution E-5007, p. 30: "In May 2018, the Commission found in D.18-05-041 that SoCalGas had not used ratepayer funds to advocate for more stringent but cost-effective C&S, despite the Commission's clear intent for the funds."

⁴ Resolution E-5007, p. 30

⁵ Resolution E-5007, p. 30.

⁶ Resolution E-5007, p. 30. Also see Finding 16 (p.34): "SoCalGas was allowed rate recovery of 2016/2017 C&S expenditures vis Public Purpose Surcharge Rate advice letter filings 5212-G and 5374-G, subject to audit verification and adjustment. Staff did not find evidence that any party filed a protest challenging SoCalGas' rate recover of 2016/2017 C&S expenditures."

- The Draft Resolution should be revised to deny SoCalGas' C&S shareholder award for program year 2017 and to true up to zero SoCalGas' C&S shareholder award for program year 2016.

DISCUSSION

1. The Draft Resolution errs in concluding that approval of SoCalGas' request for rate recovery for C&S Advocacy in PY 2016 and 2017 requires approval of SoCalGas' requested C&S management fees.

The Draft Resolution's main justification for awarding SoCalGas its full management fee for C&S Advocacy in 2016 and 2017, is that fee is simply a fixed percentage of IOU expenses.⁷ Although the Draft Resolution fails to cite to a Commission decision, the decision which authorized the ESPI mechanism (D.13-09-023) should be the basis for any awards. Ordering paragraph (OP) 15 of that decision states that the "Codes and Standards (C&S) Management Fee shall be calculated and paid as a management fee equal to 12% of C&S program expenditures, not to exceed authorized expenditures, incurred in each program year."⁸

The Draft Resolution's reading of OP 15 is too prescriptive and fails to consider the Commission's logic in establishing a management fee approach. The discussion in D.13-09-023 provides necessary context to ascertain the intended interpretation and application of OP 15. The discussion highlights that unlike other kinds of resource activities, C&S advocacy expenditures often do not result in savings until after the budget cycle ends.⁹ To address this issue, the Commission chose a management fee-based program expenditure rather than adopting a performance-based incentive. Specifically, the Commission found that

[b]ecause of the complications associated with measuring savings from C&S advocacy as part of the resource savings calculations, we conclude that the use of a management fee approach... provides a practical solution for this program cycle. In view of the additional complications in measuring resources savings...ESPI earning for C&S advocacy shall be rewarded as a function of program expenditures.¹⁰

⁷ Draft Resolution E-5007, p.30, 2nd paragraph. Page 30, paragraph 2 makes the point that no party advice letters 4884-G, 5053-G, 5212-G and 5374-G requesting rate-recovery by SoCalGas for public purpose programs such as energy efficiency, and presumably, C&S advocacy. While the information is not relevant to argument we are making here, we point out that the Public Advocates Office had not begun to investigate SoCalGas' use of C&S advocacy funds until well *after* these advice letters were filed.

⁸ D.13-09-023, Ordering Paragraph 15, p. 98.

⁹ D.13-09-023, pp. 75-76.

¹⁰ D.13-09-023, p. 77.

In other words, the Commission found that adoption of a management fee based on budgets was expedient because it is difficult to directly measure and reward targeted outcomes, such as energy savings, and even more difficult to quantify targeted inputs such as effort. Therefore, budget expenditures become a proxy for IOU effort.

In developing the proxy for IOU effort, it is clear that the Commission intended to reward the utilities for their effort to promote more stringent codes and standards.¹¹ However, it is equally clear that D.13-09-023 did not foresee the situation where an IOU actively acts to circumvent the adoption of more stringent codes and standards. D.13-09-023 provides no guidance or requirement for when an IOU acts to prevent the achievement of the Commission's C&S goal. OP 15 is premised on the assumption that the utility acted properly.

The Draft Resolution erroneously rewards SoCalGas for its work to prevent the adoption of stringent codes and standards. In D.18-05-041, the Commission made a factual finding that SoCalGas "has not worked towards adoption of more stringent codes and standards."¹² Consistent with D.18-05-041, the Draft Resolution finds that SoCalGas "had not used ratepayer funds to advocate for more stringent but cost-effective C&S, despite the Commission's clear intent for the funds."¹³ SoCalGas' failure to work towards C&S improvements defeats the purpose of the ESPI in aligning the utilities incentives with ratepayers and motivating utilities to "to prioritize EE goals."¹⁴ Approval of an a unmerited and, therefore, unjust reward to SoCalGas would set dangerous precedent that permits utility shareholders to reap financial rewards even when a utility disregards or undermines Commission policy and state goals.

The Commission can and should deny a utility's claim when the facts show that the utility does not merit the award. Indeed, other sections of the Draft Resolution make various adjustments to the awards claimed by SoCalGas and other IOUs.¹⁵ It is therefore entirely appropriate within the ESPI framework to deny SoCalGas' management fee for C&S activities.

2. The Draft Resolution errs in finding that the Commission must grant incentives for program years prior to 2018.

The Draft Resolution further errs in finding that denying SoCalGas a management fee would constitute an inappropriate retroactive decision. "Consistent with the going forward nature of the C&S advocacy limitation," the Draft Resolution states, "it would be inappropriate to deny otherwise permissible incentives prior to 2018."¹⁶

¹¹ D.13-09-023, p. 77.

¹² D.18-05-041, Finding of Fact 77, p. 168.

¹³ Draft Resolution E-5007, p.30.

¹⁴ D.13-09-023, p. 2.

¹⁵ Pages 14-17 of the Resolution (E-5007) detail "Commission Adjustments of ESPI Awards."

¹⁶ Resolution E-5007, p.30.

The “going forward nature of the C&S advocacy limitation,” refers to the remedy the Commission ordered in D.18-05-041. In that decision, the Commission determined that SoCalGas had, indeed, misused C&S advocacy funds.¹⁷ As a preliminary remedy, the Commission prohibited SoCalGas from participating in statewide C&S standards advocacy activities going forward through at least 2025. However, D.18-05-041 did not impose retroactive sanctions on SoCalGas. As finding of fact 79 of D.18-05-041 stated: “Requests for sanctions against alleged past misconduct in codes and standards advocacy are not within the scope of this proceeding.”¹⁸

The Draft Resolution errs in suggesting that the same limitations that applied to D.18-05-041 with regards to determining and imposing a penalty also apply to the determination of management incentives or fees within the ESPI. While the adjudication of sanctions was outside the scope of D.18-05-041, which was focused on approving EE budgets going forward, evaluating *past* performance and determining whether to grant utilities’ claims for shareholder performance awards and management fees is the very purpose of this resolution.¹⁹ Therefore, contrary to the assertion that it would be “inappropriate to deny otherwise permissible incentives prior to 2018,” the adjustment of incentives is not only appropriate, it is the very purpose this resolution is written.

3. The draft resolution should be revised to deny SoCalGas’ C&S shareholder award for program year 2017 and to true up to zero SoCalGas’ C&S shareholder award for program year 2016.

The Commission’s findings in D.18-05-041 form a compelling basis to deny SoCalGas’ request for shareholder awards associated with C&S advocacy. In D.18-05-041, the Commission made two relevant findings: (1) the evidence shows that SoCalGas has failed to work toward the adoption of more stringent codes and standards;²⁰ and (2) the Commission’s intent that C&S advocacy funds be used to work towards the adoption of higher appliance standards and building codes has been clearly articulated since D.05-09-043.²¹

The Commission should not award SoCalGas shareholder incentive payments for C&S advocacy in program years 2016 and 2017. To reward SoCalGas for actions that the Commission has found contradict the Commission’s stated goals would undermine the Commission’s authority and credibility as well as the Commission’s efforts to achieve greater energy efficiency. Rewarding SoCalGas with shareholder incentives for codes and standards advocacy while it actively worked against adoption of more stringent standards is also grossly unfair to ratepayers,

¹⁷ D.18-05-041, Findings of Fact 77-78, pp. 168-169.

¹⁸ D.18-05-041, Findings of Fact 79, pp. 169.

¹⁹ Resolution E-5007 approves, with adjustments, Energy Efficiency Savings and Performance Incentives awards for the four major California investor-owned utilities for program years 2016 and 2017. (E-5007, p. 1).

²⁰ D.18-05-041, Finding of Fact 77.

²¹ D.18-05-041, Finding of Fact 78.

who provide the utilities with funds to advocate on the ratepayers' behalf. If the draft resolution is not revised, ratepayers would be doubly burdened: first by not receiving the energy savings benefits they should have from codes and standards that SoCalGas advocated against, and second by funding shareholder incentive awards to SoCalGas for its adverse advocacy.

The draft resolution should be revised to deny SoCalGas' C&S shareholder award request for program year 2017 and true up to zero SoCalGas' C&S shareholder award request for program year 2016.

CONCLUSION

For the foregoing reasons, the Public Advocates Office respectfully requests that the Commission adopt the recommendations as discussed herein.

Sincerely,

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Service List R.13-11-005